QUESTION PRESENTED

Whether the court of appeals erred in refusing to adopt a state statute providing for a one-year period for redemption as part of the body of federal law controlling foreclosures of real estate mortgages held by the Federal Housing Administration.

STATEMENT

This action was brought by the United States on behalf of the Federal Housing Administration ("FHA") to foreclose a mortgage the latter held on property in Caldwell, Idaho. Stadium Apartments, Inc., borrowed $130,000 from the Prudential Insurance Company to build an apartment house. The mortgage given to secure this loan was insured by the FHA pursuant to Title VI of the National Housing Act, 12 U.S.C. 1736 *et seq.*

When the mortgagor defaulted, Prudential assigned the note and mortgage to the Secretary of Housing and Urban Development under Section 608(e) of the Act, 12 U.S.C. 1743(e) (Pet. App. 2–3). The United States then brought this action.

The mortgagor failed to answer the complaint or to appear, and the district court granted the United States a default judgment of foreclosure and for $93,804.97 on this note. The United States was the only bidder at the foreclosure sale. It purchased the property for $55,100, $2,900 less than the district court found to be its fair market value (Pet. App. 18).

The court ruled that, under Idaho law, the mortgagor would have one year after the foreclosure sale

during which it might redeem. 2 Idaho Code 11-402.[1] The United States appealed this ruling.[2] The court of appeals reversed, holding that federal law was controlling and that, although federal law might employ state law as the rule of decision in particular instances, state laws providing for post-sale redemption periods should not be adopted. After considering the competing interests involved, the court concluded that application of state redemption statutes would subject the government to a widely varying and costly device but would not provide substantial additional protection to mortgagors (Pet. App. 14-19).

ARGUMENT

There is no dispute that federal, rather than state, law governs FHA mortgage foreclosures. The issue is the extent to which varying laws in the 26 states which grant post-sale redemption rights should be adopted in fashioning a federal rule. In deciding this issue, the responsibility of the court is to identify and balance the competing interests reflected by state and federal law. See, *e.g.*, *United States* v. *Brosnan*, 363 U.S. 237; *Clearfield Trust Co.* v. *United States*, 318 U.S. 363; *United States* v. *New Crest Garden*

[1] The redemption period fixed by the district court expired on December 12, 1968. On December 9, 1968, the United States received an application to redeem from an assignee of the mortgagor (Pet. App. 3).

[2] The court of appeals invited the attorneys general of the states in the Ninth Circuit to participate as friends of the court. The attorneys general of Arizona, California, Guam, and Washington did so and subsequently the court designated them as intervenors (Pet. 1).

Apartments, 268 F.2d 380 (C.A. 9), certiorari denied, 361 U.S. 889.

The controversy in this case is over the correctness of the court of appeals' evaluation of the proper balance to be struck in accommodating the particular interests here involved. The court correctly resolved that issue. Further review is, therefore, not warranted.

This approach was followed in *United States* v. *Yazell*, 382 U.S. 341, upon which petitioner relies (Pet. 6). In that case, this Court held that Texas' rule regarding coverture would be employed as part of federal law governing a Small Business Association loan which had been individually negotiated on the assumption that Texas law would apply. 382 U.S. at 345-346. Moreover, the Court noted its special concern for "family and family-property arrangements" in concluding that state law should apply in the absence of "major damage" to "clear and substantial interests of the National Government." 382 U.S. 352. Cf. *United States* v. *Holz*, 314 F.2d 301 (C.A. 6).

There is a substantial question as to whether the Attorney General of California has standing to seek review of the judgment of the court of appeals. Although that court designated him, together with other attorneys general, as intervenors with authority "to file petitions for rehearing * * * and to take any further proceedings which may be available to them should they desire to seek review of the court's judgment" (Pet. 1-2), such authorization could not create any case or controversy between the State of California and the United States if none otherwise existed. The only dispute in this case was whether a mortgagor was entitled to the benefit of the Idaho redemption statute when the United States foreclosed a mortgage it held upon property in Idaho. California has no direct interest in that issue, and there is no actual case or controversy between the United States and the Attorney General of California. The fact that the latter was permitted to intervene in the court of appeals and that he disagrees with the decision of that court that state redemption statutes should not be adopted as part of the federal law governing the foreclosure of mortgages held by the FHA, does not create the kind of specific dispute between him and the United States that is necessary for this Court to exercise its judicial authority.

1. A basic purpose of redemption statutes is to protect mortgagors by insuring that a fair price is paid by the purchaser at foreclosure sales. As a practical matter, the mortgagee is frequently the only bidder at such sales. Absent competitive bidding and a redemption statute, the mortgagee would be able to obtain a windfall by purchasing property at less than market value and securing a deficiency judgment as well. Redemption statutes permit certain persons—usually, the mortgagor or his assignee and junior lien holders—to obtain the property for a period after sale at a fixed price, usually that paid at the sale. The effect is to force the mortgagee to bid an amount he believes to be the market value of the property (or his total investment, if less) for, if he does not, it may be redeemed at the bargain price.

The court of appeals found that redemption was unnecessary for protection in the case of FHA mortgages, however, because of FHA's announced policy to bid fair market value at foreclosure sales. See FHA Manual, Book 2, Volume VII, Section 72926.[4]

2. The court of appeals also found that adopting State redemption statutes as part of the governing law would be extremely costly to the United States as mortgagee. The prospect of post-sale redemption may discourage bidding at the foreclosure sale because prospective purchasers do not wish to obtain property with a defeasible title (Pet. App. 14–15). This increases the likelihood that the government, as mort-

[4] As the dissenting judge pointed out, the Act limits the FHA's bid at the foreclosure sale to the unpaid balance of the

gagee, will have to buy in at the sale to protect its investment and hold the property until it can give good title to a purchaser at the end of the redemption period. During this time, not only will its purchase money be tied up in the project, but it also may have to expend additional amounts to maintain, preserve, and insure property which frequently is in serious disrepair at the time of default.

Most state redemption statutes, including that of Idaho, do not permit the redemption price to be increased by an amount spent on improvements, however (Pet. App. 14–16). Although it may be possible, as petitioner suggests (Pet. 8), to fashion a federal rule that would include the cost of "necessary improvements" in the redemption price, this would not be sufficient to protect the government's interests. Its funds would still be tied up and it would be forced to undertake management of the property, and to bear the risk of its deterioration for the length of the redemption period. As the court of appeals noted,

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debt. It is infrequent that the fair market value will exceed this amount. FHA insures a high percentage of the original cost of projects (generally 90 percent or more). When there is a default, it is ordinarily because the income from these projects is much lower than expected. Their market value is consequently depressed.

In those few instances where fair market value exceeds the FHA's investment, in order to take advantage of FHA's low bid the mortgagor must obtain additional financing or a buyer either before foreclosure or after the sale, if there is a redemption period. The practice of the FHA is to forebear filing a foreclosure action until the mortgagor has exhausted all efforts to put himself back on his feet. This maximizes the mortgagor's chances of obtaining a buyer prior to foreclosure and minimizes the importance of a post-sale redemption period.

"[t]hese are precisely the problems which the federal government should not have to face. It is not in the real estate business" (Pet. App. 16).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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The present case concerns only the FHA's insurance of multi-family projects. Where there is a default on an FHA-insured mortgage for a single-family residence, the private mortgagee must foreclose and turn over good title to the FHA before the insurance can be paid. Such foreclosure actions take place under state law, and where the private mortgagee is subject to a post-sale redemption period, the FHA generally will not accept title to the property until the time for redemption has expired. 12 U.S.C. 1710(a).

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